

ESTATES OF ALICE SENOYA LUNA and GUADALOUPE LUNA	: Order Reversing Denial of Reopening, : Remanding Estates for Reopening, and : Referring Additional Question to the : Anadarko Area Director, Bureau of : Indian Affairs : : Docket Nos. IBIA 98-62 : IBIA 98-67 : : May 18, 1999
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Appellants Donna Kaye (Luna) Hanson (Docket No. IBIA 98-62) and Frank Luna, Jr. (Docket No. IBIA 98-67) seek review of a January 15, 1998, order denying reopening entered in the Estates of Alice Senoya Luna (IP TU 35 P 76) and Guadalupe Luna (IP OK 123 P86) by Administrative Law Judge Richard L. Reeh. For the reasons discussed below, the Board of Indian Appeals (Board) reverses that decision and remands these estates to Judge Reeh for reopening. It also requests that the Anadarko Area Director, Bureau of Indian Affairs (BIA), review the status of the inquiry concerning whether Leon Ray Luna and Charles Crumm are the same person and take any appropriate action.

Alice died intestate on December 14, 1974. Administrative Law Judge Jack M. Short held a hearing in her estate on April 5, 1976. Guadalupe, Alice's son, was the only family member present at the hearing. Guadalupe contested part of the family history data provided to the Judge by BIA. Specifically, he disputed information indicating that his deceased brother, Frank Luna, had been married to a woman named Lenora Canter and had a child with her named Leon Ray Luna. 1/ Despite this testimony, in his July 9, 1976, order determining Alice's heirs, Judge Short found that the documentary evidence presented to him was sufficient to prove that Leon Ray Luna was the son of Frank Leo Luna. 2/ The Judge found that Alice's heirs included Guadalupe; Appellants here, who were identified as Alice's grandchildren through her previously deceased son Frank Leo Luna; and Leon Ray Luna, who was also identified as Frank Leo

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1/ The Department did not conduct a probate for Frank, apparently because he did not own any trust property.

2/ Appellants contend that Frank Luna and Frank Leo Luna are not the same person.

Luna's son. The order stated at page 2: "[T]he whereabouts of Leon Ray Luna is unknown in spite of efforts to locate him. If he is not found within the next three years, this case should be referred to this office for reopening and modification of this Order."

Notice of this decision and of the right to request rehearing was sent to Appellants among others. Appellant Hanson admits that she received notice of the decision in Alice's estate, but Appellant Luna denies receiving such notice.

No request for rehearing was filed.

Appellant Hanson states that, in the summer of 1977, she went to BIA and questioned the inclusion of Leon Ray Luna as an heir. She says she was told that BIA had three years in which to locate Leon Ray Luna and, if it failed to locate him within that time period, it would refer the estate back to the Judge.

Nothing in the record indicates that BIA located Leon Ray Luna before July 9, 1979, or that it thereafter referred Alice's estate back to the Judge.

By letter dated September 2, 1980, an individual named Charles Crumm wrote to Nix & Harris, an oil company which apparently had leasing rights on Alice's allotment. Crumm stated that he was Leon Ray Luna, that he had changed his name to Charles Crumm, and that the company should make future checks payable to him at an address in California. The record does not show whether the company complied with Crumm's instructions.

Appellants state that in March 1982, Crumm informed BIA of an address change and stated that he was also known as Leon Ray Luna; that upon receipt of this information, BIA gave Leon Ray Luna's Individual Indian Money (IIM) account number to Crumm and Crumm began to receive the funds in that IIM account; and that BIA neither referred the matter to the Judge for a determination of whether Charles Crumm was Leon Ray Luna nor notified Alice's heirs that Leon Ray Luna had been located. Appellants contend that they were never officially notified that BIA was treating Leon Ray Luna and Charles Crumm as the same person.

Guadaloupe died intestate on February 1, 1986. Administrative Law Judge Sam E. Taylor noticed two hearings for his estate. No family members appeared at either hearing. On July 15, 1988, Administrative Law Judge S.N. Willett held a hearing at which the only family member present was Mary Lou (Luna) Rhoads, Guadaloupe's sister. Following the hearing, Judge Willett prepared a document entitled "Summary of Proceedings [In Lieu of Transcript]." That document stated:

Due to a power outage, the entire proceeding could not be recorded. Due to the extreme heat in the District Office where the hearing was conducted, the

witness elected to proceed expeditiously to conclude the hearing. The full family history of the decedent, as well as the creditor claims, were reviewed.

Summary at 3.

Judge Willett entered an order determining Guadaloupe's heirs on August 26, 1988. Included among his heirs were Appellants, identified as Guadaloupe's niece and nephew; and Leon Ray Luna, also identified as Guadaloupe's nephew. Nothing in Judge Willett's order indicated that Crumm claimed to be Leon Ray Luna.

Appellants were among those sent notice of this decision and of the right to seek rehearing. Appellant Luna denies receiving notice of this order from the Judge.

No request for rehearing was filed.

Appellant Luna states that he learned that Crumm was receiving money as an heir in April 1993; that he immediately contacted BIA for information concerning Crumm's identity; and that in May 1993 he informed BIA that Crumm was his cousin and that Leon Ray Luna was not his brother. He indicates that he persisted in his contacts with BIA throughout 1993, 1994, and 1995.

It appears that on August 3, 1995, BIA placed a hold on the IIM account of Leon Ray Luna/Charles Crumm and began to investigate whether these were the same person. The record shows that BIA sought information from the Social Security Administration and Comanche Tribal Enrollment, and requested an investigation by BIA Law Enforcement.

On December 17, 1996, Judge Reeh received a petition to reopen both estates from the Acting Superintendent, Anadarko Agency, BIA (Superintendent). The Superintendent stated that information provided by the family indicated that Leon Ray Luna should not have been found to be an heir in either estate. He presented information learned through BIA's further investigation into this heirship question, and noted that ongoing investigations were being conducted into the question of whether Leon Ray Luna and Charles Crumm were the same person.

On April 30, 1997, Judge Reeh issued a Notice of Reopening and Order to Show Cause in both estates. That Notice and Order states:

On December 17, 1996, a Memorandum \* \* \* was received from the Anadarko Agency. It stated that, based upon information received from family members and investigation by the Agency, Leon Ray Luna should not have been identified as an heir-at-law in either estate. It further stated that an individual named Charles Crumm (a.k.a. Leon Ray Luna) improperly received distributions from this estate.

Reopening this matter to consider whether either Leon Ray Luna and/ or Charles Crumm is a presumptive heir might prevent manifest error in both estates. Thus, it appears that each case should be reopened pursuant to 43 C.F.R. § 4.242(h). This regulation provides, “If a petition for reopening is filed more than 3 years after entry of a final decision in a probate, it shall be allowed only upon a showing that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.”

All parties, particularly Leon Ray Luna and/or Charles Crumm, should have an opportunity to oppose the proposed reopening.

In the absence of opposition, it is anticipated that Modification Orders will issue determining that neither Leon Ray Luna nor Charles Crumm should be determined to be an heir-at-law in either of the referenced estates. Because a decision may be made without further hearing, it is very important that opposition to the proposed rehearing [sic] be timely announced.

In separate letters each dated June 10, 1997, Appellants expressed their agreement with the petition for reopening. The record does not include any filing opposing reopening.

Judge Reeh issued the order presently under consideration on January 15, 1998. That order denied “petitions” for reopening, stating:

In the Notice of Petition to Reopen and Order to Show Cause, the issues of timeliness and standing were identified, and parties were invited to submit their positions. Responses were received; however, no additional documentation was provided.

Jan. 15, 1998, Order at 1. Judge Reeh continued: “Petitioners have waited far too long to submit a Petition for Reopening.” Id. at 2. After citing more than twenty cases denying reopening of old estates, the Judge ordered “that the Memorandum from the Anadarko Agency dated December 17, 1996, accorded the status of a Petition to Reopen, be denied.” Id.

Appellants appealed to the Board and filed a brief. No other briefs were filed.

The first question raised in these appeals is whether reopening should have been granted in order to determine whether Leon Ray Luna was properly found to be an heir of Alice and Guadalupe. If reopening is granted and it is determined that Leon Ray Luna is not an heir of Alice and Guadalupe, then Crumm would not be an heir whether or not he and Leon Ray Luna are the same person.

In his April 30, 1997, notice and order, Judge Reeh clearly anticipated reopening these estates in the absence of opposition. However, although no one opposed reopening, the Judge nevertheless denied reopening in his January 15, 1998, order. The 1998 order states that the 1997 order identified timeliness and standing issues. The Board finds that the 1997 order quoted 43 C.F.R. § 4.242(h), but did not raise any question about the Superintendent's standing or the timeliness of his petition. Furthermore, the 1998 order denies the petition filed by the Superintendent on timeliness grounds, but relies on cases which denied reopenings sought by individuals.

The petition for reopening was filed by the Superintendent. The Board has specifically held that BIA Superintendents are proper parties to petition for reopening. See, e.g., Estate of Paul Widow, 17 IBIA 107, 113 (1989), and cases cited therein; Estate of Helen Ward Willey, 11 IBIA 43 (1983), and cases cited therein. In Willey the Board held: "The Superintendent, as the delegate of the Secretary of the Interior, is equally as obligated as the Administrative Law Judge to ensure that the Federal trust responsibility toward Indians is carried out in the administration of decedents' estates." 11 IBIA at 47. In Estate of Paul Yazza Antonio, 12 IBIA 177, 178 (1984), the Board held that "BIA has a responsibility to seek reopening when it has information indicating some likelihood that a probate decision is incorrect," and that it was "manifest injustice" for BIA to have such information and not act on it.

The Board has approved the actions of BIA Superintendents who have sought reopening of estates closed for more than three years when they have discovered information suggesting that the original probate decision was incorrect. See, e.g., Estate of Santana Nailor, 30 IBIA 150 (1996) (original probate order issued on Apr. 23, 1980; Superintendent's petition to reopen filed on Apr. 14, 1994; reopening granted, distribution changed); Estate of H. James Ross, 25 IBIA 85 (1993) (original probate order issued on Mar. 29, 1972; Superintendent's petition to reopen filed on Aug. 19, 1992; reopening denied after examination of evidence). Cf. Antonio, supra (original probate order issued on Mar. 22, 1943; record indicated that BIA had information about another possible child of the decedent as early as Apr. 29, 1958, but did not petition for reopening; reopening ordered and determination on merits required).

The Superintendent's petition for reopening contained information from BIA's investigation strongly suggesting that Leon Ray Luna was improperly found to be an heir of Alice and Guadalupe. The Superintendent's new information corroborated Guadalupe's testimony at Alice's probate hearing. BIA is responsible for thoroughly researching family histories before submitting them to the Administrative Law Judge. The Superintendent's petition admitted error in the presubmission research as to Alice's and Guadalupe's family history. As the Board held in Willey, the Superintendent has an obligation to ensure that the Federal trust responsibility is properly carried out in the administration of Indian estates. The Superintendent's petition for reopening was filed in accordance with that obligation and is clearly of the type which the Board has previously approved.

The Board finds that the Superintendent's petition to reopen should have been granted. Therefore, it reverses Judge Reeh's January 15, 1998, order denying reopening and remands these estates to the Judge for a decision on the merits. 3/

The second question raised by these appeals relates to BIA's release of funds held for Leon Ray Luna to Charles Crumm. The Superintendent's petition for reopening included a copy of an October 21, 1996, letter to Crumm notifying him that a hold had been placed on the Leon Ray Luna/Charles Crumm IIM account that would "remain until we have presented all the above information to the Administrative Law Judge for a determination if an error has been made and to reopen the probates of Alice Senoya Luna and Guadaloupe Luna." Oct. 21, 1996, Letter at 2.

It appears that the Superintendent believed that, on reopening, the Judge would decide if Leon Ray Luna and Charles Crumm were the same person. However, such a decision is beyond the authority delegated to Administrative Law Judges in probate proceedings by 43 C.F.R. §§ 4.202-4.206. Instead, BIA is responsible for verifying the identity of individuals claiming a right to receive funds from an IIM account. See, e.g., Higgins v. Billings Area Director, 32 IBIA 117 (1998) (funds held in an IIM account for Kenneth W. McKelvey released to Kenneth Wayne Higgins after Higgins obtained an order from the Superior Court of the State of California, County of Placer, finding him to be the same person as McKelvey).

The Superintendent's petition for reopening stated that Crumm had requested a hearing on the hold placed on the IIM account, and that a hearing would be held by the Superintendent, Central California Agency, BIA, in order to accommodate Crumm, who lived in California. The information before the Board does not show whether that hearing was held or, if it was, its outcome. Although the hearing apparently concerned the hold placed on the IIM account rather than Crumm's underlying claim to be Leon Ray Luna, the information before the Board also does not show if Appellants or others who might have opposed Crumm's claim were notified of the hearing.

The Board obviously does not have current information relating to Crumm's claim that he is Leon Ray Luna. Furthermore, that question is not properly before the Board in this probate proceeding. However, in an effort to ensure that the issues in this case are finally resolved, the Board refers this question to the Anadarko Area Director and requests that he review the status of this inquiry and take any appropriate action.

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3/ The Board does not here hold that family members or other interested parties may avoid the rehearing and/or reopening requirements of 43 C.F.R. §§ 4.241 and 4.242 merely by getting a friendly Superintendent to file a petition for them. However, regardless of the source of the information, if BIA determines that it has committed error in presenting family history data to the Administrative Law Judge, the Superintendent is required to act on that determination.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Reeh's January 15, 1998, order denying reopening is reversed, and these estates are remanded to him for reopening. The question of whether Leon Ray Luna and Charles Crumm are the same person is referred to the Anadarko Area Director for appropriate action.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge